

REMARKS/ARGUMENTS

The preceding amendments and following remarks are submitted in response to the Communication mailed May 4, 2006, setting a one month shortened statutory response ending June 4, 2006. With this Amendment, claims 31-48 have been cancelled, without prejudice, as being drawn to a non-elected Group.

In the Restriction Requirement, the Examiner restricted the invention into two groups; namely, Group I drawing to “Apparatus and method for Endotracheal Intubation”, classified in class 600, subclass 462; and Group II drawn to “Steerable Medical Assembly including an actuator”, classified in class 604, subclass 95.04. The Examiner asserts that Inventions I and II are related as subcombinations disclosed as usable together in a single combination, stating that subcombination I has separate utility such as in relation to balloon or cuff sets adapted to anchor the endotracheal tube in a fixed location. By this Response, Applicants hereby elect, *with traverse*, the Invention of Group II, corresponding to claims 49-55.

Applicant asserts that claims 1-11, 13-26, and 28-30 should be considered in conjunction with Group II since the examination of these claims would not pose a significant burden on the Examiner. Section 803 of the MPEP sets forth the criteria that must be considered for a proper restriction requirement between two or more patentably distinct inventions. According to § 803:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j); and

(B) There must be a serious burden on the examination if restriction is required (see MPEP § 803.02, § 808, and § 808.02).

(emphasis added).

Applicant asserts that there would be no serious burden on the Examiner in considering claims 1-11, 13-26, and 28-30 in addition to claims 49-55. Claims 49-55 are each directed to a medical assembly. Claims 1-11, 13-26, and 28-30, in turn, are similarly directed to a medical assembly or endotracheal medical assembly, and recite several elements which overlap with claims 49-55. Although Groups I and II may require a search in different classes, a search of claims 1-11, 13-26, and 28-30 would not pose a significant burden on the Examiner since there would likely be a significant overlap in searching between the two sets of claims. For example, a search of independent claim 49 would likely involve a search of the same art as for claim 1, which the Examiner has already considered in the prior office action. Thus, because a search of claims 1-11, 13-26, and 28-30 would not impose a significant burden on the part of the Examiner, Applicant requests that these claims be considered in conjunction with Group II.

Applicants further disagree with the Examiner's interpretation of the term "actuator" recited in claims 50-52 and 55. With respect to dependent claims 50-52, for example, the term "actuator" is used therein to denote one example of a means for inducing movement in the distal section of the tubular member, as recited in independent claim 49. Although the actuator may be used in steering the assembly through the patient's body, as suggested by the Examiner, Applicant submits that the actuator is not limited in this manner. As such, Applicant submits that the Examiner's interpretation of the term "actuator" is not warranted.

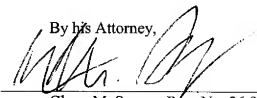
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are now in condition for allowance; issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

MICHAEL MILLER

By his Attorney,

Date: June 2, 2006



Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050